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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/363,728	07/29/1999	SARATH KRISHNASWAMY	6401.US.01	8480

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EXAMINER
LE, UYEN CHAU N

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 03/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/363,728	KRISHNASWAMY ET AL.	
	Examiner	Art Unit	
	Uyen-Chau N. Le	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 January 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Requesting Continued Examination (RCE)

1. Receipt is acknowledged of the Requesting Continued Examination (RCE) field 28 January 2002.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Böcker et al (US 5,507,288) in view of Cheung et al (US 5,074,977).

Re claim 1, Böcker et al shows and discloses hand-held analytic test instrument comprising a housing, a barcode reader 28, a port 17, a display 21, a user interface 20 (e.g.,

on/off button) capable of activating the barcode reader. The barcode reader 28 is disposed in the housing for scanning a barcode associated with a test strip 13. The port 17 is disposed in the housing for receiving the test strip 13. The instrument also comprising an electronic circuit that in electrical communication with the port 17 for processing an analytic signal received from the test strip 13 and generating analytic data there-from. The display 21 is in electrical communication with the circuit for displaying certain analytical data. The instrument further comprises a connector in electrical communication with the circuitry and electrically connectable to a host computer via a data communications network, wherein the circuitry automatically uploads the analytical data to the host computer upon connection thereto. (See Figs. 1&2; col. 5, line 35 - col. 6, line 60; and col. 8, lines 25-28).

Böcker et al fails to teach or fairly suggest a numeric keypad for selecting test or menu modes, editing entries, terminating entries.

Cheung et al teaches the above limitation with keypad 72 and display 24 of the measurement 10 allow the operator inputs and information outputs to be effected (fig. 2; col. 10, lines 39-48).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the conventional keypad as taught by Cheung et al into the teachings of Böcker et al in order to provide the user with a more flexibility in selecting which test to perform and in inputting the necessary data. Furthermore, such modification would have been an obvious extension as taught by Böcker et al, well within the ordinary skill in the art, and therefore an obvious expedient.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US 5,052,943) in view of Koenck et al (US 5,324,925) and Davis et al (US 5,828,966).

Re claims 3 and 7, Davis shows and discloses a docking station 2 comprising a connector electrically 32 connectable to the instrument, a first data port in electrical communication being connectable to a computer for transferring data, and a second data port in electrical communication being connectable to a peripheral device for recharging the batteries (fig. 1; col. 5, lines 5-68; and col. 10,lines 47-53). Furthermore, Davis inherently teaches a control mechanism for controlling the switch, which is in electrical communication with the connector, to selectively pass the analytical data to the computer or to the peripheral device (col. 5, lines 5-10; and col. 11, lines 24-30).

Davis fails to teach or fairly suggest that the docking station being configured to pass data between the analyte test instrument and the first data port when the docking station is in a default condition.

Koenck et al teaches the above limitation in figs. 7-8 and col. 3, lines 28-37.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Koenck et al into the teachings of Böcker et al in order to provide Böcker et al with the latest technology, wherein data can be transmitted remote host terminal via wireless communication. Furthermore, such modification would have been an obvious extension as taught by Böcker et al, well within ordinary skill in the art, and therefore an obvious expedient.

Davis as modified by Koenck et al fails to teach or fairly suggest a circuitry to prevent overcharging.

Davis et al teaches the above limitation with a special feature to prevent overcharging (abs., lines 12-15 and col. 2, lines 6-10).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Davis et al into the teachings of Davis/Koenck et al in order to provide Davis/Koenck et al with a capability of preventing the system from being damaged by overcharged it. Furthermore, such modification would have been an obvious extension as taught by Davis/Koenck et al, well within the ordinary skill in the art, and therefore an obvious expedient.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) in view of Cheung et al. The teachings of Cheung et al have been discussed above.

Re claim 4, Brown teaches the method of managing data for a plurality of test instrument connected to a data communication network comprising step of detecting via a host computer the connection of each instrument to the data communication network; uploading data receiving from each instrument to the host computer; processing the uploaded data on the host computer for operator review; and downloading configuration data from the host computer to each test instrument (figs. 1&2; col. 8, line 14 through col. 15, line 44).

Brown fails to teach or fairly suggest that each instrument including a test strip port, which accepts test strip for determining the level of analyte in a sample taken from a patient.

Cheung et al teaches the above limitation with a measurement 10 having a slot for accepting test strip 16 (fig. 2; col. 10, lines 24+).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Cheung et al into the teachings of Severt et al

in order to provide Severt et al with a high-tech system, wherein the reading results (i.e., level of analyte) of each analyte test can be directly transmitted to the host computer and the instruction for setting up and controlling of each analyte test can be received directly from the host computer. Furthermore, such modification would have provided Severt et al with a more compact system, wherein the data communication network system and the analyte test apparatus are in the same unit/instrument. Accordingly, such modification would have been an obvious extension as taught by Severt et al to provide Severt et al with a more user-friendly system, wherein the user can have the analyte test result readily, well within ordinary skill in the art, and therefore an obvious expedient.

7. Claims 2 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Böcker et al in view of Cargin, Jr. et al (US 5,602,456 - cited by the applicant). The teachings of Böcker et al have been discussed above.

Re claims 2 and 5-6, Böcker et al shows and discloses hand-held analytic test instrument comprising a housing, a port 17, a display 21, a battery compartment; a barcode reader 28 disposed in the housing; and a user interface 20 for activating the barcode reader 28. The port 17 is disposed in the housing for receiving the test strip 13. The instrument also comprising an electronic circuit that in electrical communication with the port 17 for processing an analytic signal received from the test strip 13 and generating analytic data there-from. The display 21 is in electrical communication with the circuit for displaying certain analytical data. The instrument further comprises a connector in electrical communication with the circuitry and electrically connectable to a power source. The battery compartment is formed in the housing and inherently comprising a pair of electrical contacts for providing power from a battery to the

electronic circuitry and a rechargeable battery disposed in a battery holder. (See Figs. 1&2; and col. 5, line 35 - col. 7, line 8).

Böcker et al fails to disclose or fairly suggest that the battery compartment also comprising a pair of recharge contacts; a bus bar and a user interface capable of allowing an operator to enter data, wherein the bus bar is disposed on the battery holder and in electrical communication with the pair of recharge contacts for recharging the batter when the instrument is connected to the power source; and a numeric keypad for selecting test or menu modes, editing entries, terminating entries.

Cargin, Jr. et al teaches that the battery compartment comprising those contacts 34, 35; a bus bar 32 for recharging the battery directly without removing the battery out of the compartment 29, and for preventing the inadvertent and possibly hazardous application of recharging electrical power to non-chargeable batteries (col. 12, lines 42-46); and a user interface, which is keypad 14 having a plurality of keys 56 (fig. 1; col. 10, lines 1-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Cargin Jr. et al into the teachings of Böcker et al due to the fast, easy, and convenience way of recharging the battery directly without removing the battery out of the compartment. Furthermore, such modification would have provided Böcker et al with a more user-friendly system, wherein the user can enter the required data manually via the keypad. Accordingly, such modification would have been an obvious extension as taught by Böcker et al, well within ordinary skill in the art, and therefore an obvious expedient.

Response to Arguments

8. Applicant's arguments with respect to claims 1 and 3-4 have been considered but are moot in view of the new ground(s) of rejection.

9. In response to the Applicant's argument with regard to "... neither Böcker et al nor Cargin Jr. et al discloses or suggest an analyte test instrument having both a user interface capable of allowing an operator to enter data and a barcode reader disposed in the housing..." (p. 9, 2nd paragraph), the examiner respectfully requests the applicant to further review Böcker et al and Cargin Jr. et al, by giving its broadest reasonable interpretation, wherein the barcode reader 28 is disposed in the housing of the test instrument (Böcker et al: figs. 1&2; and col. 5, line 35 - col. 7, line 8), and a user interface 14, which is a keypad having a plurality of keys 56, capable of allowing an operator to enter data (fig. 1; col. 10, lines 1-16). Therefore, the teachings of Böcker et al in view of Cargin Jr. et al meet the limitation of claimed invention.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patents to Douglas et al (US 6,106,780); White et al (US 5,366,609); Lee (US 5,764,035); Reber et al (US 5,961,451); Matzinger et al (US 5,515,170); Jina et al (US 5,526,120); Sohrab (US 5,714,123); and Heinonen et al (US 6,295,506) are cited as of interest and illustrate a similar structure to an analytic test instrument system including data management system.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 703-306-5588. The examiner can normally be reached on M-T and TR-F 8:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL G LEE can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Uyen Chau N. Le

March 11, 2002

KARL D. FRECH
PRIMARY EXAMINER